FILED
MAY 5 1921
JAMES D. MAHER,
CLERK.

PETITION FOR WRIT OF CERTIORARI AND MEMORANDUM IN SUPPORT THEREOF.

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 1477

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, AND ALLUMAL HACKUMAL SUKHRANI, PETITIONERS,

vs.

THE INSULAR COLLECTOR OF CUSTOMS.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

Petition filed May 5, 1921.

(28,256)

ADAM C. CARSON,
New York City,
Attorney for Petitioners.

HARTFORD BEAUMONT,
Manila, P. I.,

W. DAVIS CONRAD,
New York City,
of Counsel.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

(28,256)

IN THE

Supreme Court of the United States

No. 899.

OCTOBER TERM, 1920.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL HACKUMAL SUKHRANI,
Petitioners,

vs.

THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

Notice.

Lieutenant-Colonel Grant T. Trent,
Judge Advocate, U. S. Army,
Washington, D. C.,
Attorney for the Respondent.

Sir:

Please take notice that on Monday the third day of October, 1921, upon the coming in of the Court on that day, I will submit a petition for a writ of certiorari directed to the Supreme Court of the Philippine Islands in the above entitled cause.

New York City, September 14th, 1921.

A. C. CARSON,
Attorney for the Petitioners.

The foregoing notice is hereby accepted and delivery of a copy thereof and of the petition for a writ of certiorari and memorandum in support of the petition are hereby acknowledged this 14th day of September, 1921.

GRANT T. TRENT,
Attorney for Respondent.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 899.

OCTOBER TERM, 1920.

DHARANDAS TULSIDAS, NARAINDAS LEKHRAJ, and ALLUMAL HACKUMAL SUKHRANI,

vs.

THE INSULAR COLLECTOR OF CUSTOMS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

To the Honorable,
The Supreme Court of the United States:

Dharandas Tulsidas, Naraindas Lekhraj, and Allumal Hakumal Sukhrani, British Indian subjects, natives of Hyderabad Sind, India, two of whom are former residents of the Philippine Islands, by their undersigned counsel, respectfully petition this Honorable Court for a writ of certiorari addressed to the Supreme Court of the Philippine Islands in habeas corpus proceedings therein styled "Dharandas Tulsidas, Naraindas

Lekhraj, and Allumal Hakumal Sukhrani, petitioners and appellees, versus The Insular Collector of Customs, respondent and appellant," No. 16139, and in support of this petition respectfully represent:—

That on October 20 1919, The Insular Collector of Customs of the Philippine Islands, affirming a ruling of a Board of Special Inquiry, "refused landing" in the Philippine Islands to your petitioners, and ordered that "they be deported to the port of embarkation" from which they had arrived at the port of Manila on September 26, 1919 (Record, pages 4, 5, 15).

That thereafter, on January 5, 1920, the Court of First Instance of Manila entered its judgment, in Habeas Corpus proceedings, sustaining your petitioners' contentions that they were unlawfully detained and deprived of their liberty by The Insular Collector of Customs, and "definitely ordered that the petitioners be placed at liberty" (Record, pages 26, 27).

That thereafter, on November 8, 1920, upon an appeal from this judgment and order taken by The Insular Collector of Customs, the Supreme Court of the Philippine Islands entered its final judgment reversing the judgment entered by the Court of First Instance of Manila, and affirmed "the judgment of the department of customs ordering the deportation" of your petitioners (Record, page 37).

That, thereafter, on November 13, 1920, the Supreme Court of the Philippine Islands granted a stay of execution of its judgment in order to permit your petitioners to present this application for a writ of certiorari (Record, page 38).

A duly certified copy of the entire record of the case, including the proceedings in the court to which the writ of certiorari is asked to be directed, is furnished herewith as an exhibit, and includes:

	PAGE
Original Petition for a Writ of Habeas Corpus	2
Proceedings of the Board of Special Inquiry re Dharandas Tulsidas and testimony of Witnesses,	7
Decision of this Board,	8
Decision of Insular Collector of Customs on Appeal of all the Petitioners,	9
Proceedings of the Board of Special Inquiry re Naraindas Lekhraj and Allumal Hakumal Sukhrani and Testimony of Witnesses,	12
Decision of this Board,	15
Partnership Agreement Filed as an Exhibit With Both Boards of Special Inquiry,	16
Decision, Court of First Instance, Manila Habeas Corpus Proceedings,	26
Decision, Supreme Court, Philippine Islands, Habeas Corpus Proceedings on Appeal,	29
Motion and Argument for Rehearing,	33
Denial of Motion and Exception Thereto,	36
Final Judgment, Supreme Court, Philippine Islands,	37
Stay of Execution,	38

GROUNDS RELIED UPON FOR THE ISSUANCE OF THE WRIT.

I.

Your petitioners in this case have been detained and ordered deported from the Philippine Islands

under color of authority of the Act of Congress of February 5, 1917, Chapter 29, Section 3, notwithstanding their contention that as merchants and as such, members of one of the privileged classes expressly excepted from the exclusion provisions of this section of the Act, there is no lawful authority for their continued detention and deportation.

Under Section 27 of the Act of Congress approved August 29, 1916 (39 Stat., 555), read together with Section 5 of the Act to amend the Judicial Code, approved September 6, 1916, this Honorable Court has jurisdiction by certiorari, or otherwise, to require that there be certified to it for review and determination any cause decided by the Supreme Court of the Philippine Islands "in which the Constitution or any statute * * * of the United States is involved."

II.

The evidence submitted by your petitioners stands unchallenged and uncontroverted; and there was no dispute in the Court below as to the facts upon which your petitioners base their contention that they are merchants within the meaning of Section 3 of the Act.

The undisputed testimony of the witnesses who appeared before the Special Board of Inquiry (Record, pages 7, 8, 12, 13, 14), read together with the articles of partnership of the firm of "Wassiamall Assomall & Co." (Record, page 16), silk merchants, with their principal place of business and domicile in Manila, which were submitted to the Board, and "the genuineness of which is not questioned" (Record, page 26), discloses:

That your petitioners are industrial partners of that co-partnership, and joined in the execution of the articles of partnership; and, that they receive no salary or wages, but share in the profits of the business—Naraindas Lekhraj receiving 18%, Allumal Hakumal Sukhrani 10% and Dharandas Tulsidas 5% thereof;

That two of your petitioners, Sukhrani and Lekhraj, are former residents of the Philippine Islands, and were, while in the Islands, industrial partners of the predecessors in the business of the above mentioned co-partnership, the former having been absent in India for about sixteen months following a residence in the Islands of about three years; and the latter having been absent in India for about three years following a residence in the Islands of about nineteen years;

That the occupation of your petitioners set out in their respective passports, issued under authority of the British Government is that of salesmen; and that as industrial partners of the firm of "Wassiamall Assomall & Co." they will perform the duties of salesmen and/or sub-managers;

That the articles of co-partnership submitted as evidence were executed in Hong Kong not long prior to your petitioners' return to the Islands, in pursuance of a reorganization of the firm after the death of some of the former partners.

III.

The Insular Supreme Court erred in basing its judgment on a ruling that the sole evidence per-

missible in support of your petitioners' claim that they are merchants is the presentation of the "Section-Six Certificate," in the form prescribed under the Chinese Immigration Laws and regulations, and that no such certificate having been presented, "the Board of Special Inquiry, was, therefore, justified in disregarding all other proof relating to their occupation as merchants" and "was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands" (Record, page 29).

IV.

The Insular Supreme Court further erred in ruling that your petitioners must be excluded "not only" because they failed to furnish the "sole evidence permissible," but, also, because they failed to show "that they were merchants in the country from which they came" (Record, page 39).

V.

The Special Board of Inquiry and the Insular Collector of Customs based their findings that your petitioners are not "merchants," as that term is used in the Act, on a misconception of the law applicable to the undisputed and uncontroverted facts disclosed by the record of the proceedings had before them, in that they erroneously assumed that the evidence offered by your petitioners that they are industrial partners of a mercantile co-partnership, domiciled and doing business in Manila, is not competent evidence in support of your petitioners' claim of a right to enter and remain in the Philippine Islands as members of one of the privileged classes mentioned in the Act, and, on the con-

trary, constitutes proof that your petitioners are not merchants as that term is used in the Immigration Act (Record, pages 9, 15).

The Court of First Instance of Manila held directly the contrary, and the Insular Supreme Court, in reviewing the judgment of the Court of First Instance and sustaining the action of the Board, refrained from any comment on these conflicting rulings, and based its decision on grounds which do not appear to have been raised or considered by the Special Board of Inquiry or the lower Court

While it is admitted that, under the express provisions of the statute, the decision of a Board of Special Inquiry, such as that now under consideration, is final, when affirmed on administrative appeal (Act, February 5, 1917, Chapter 29, Section 17); nevertheless, this Honorable Court and the Courts of the Philippine Islands may review the decision of such administrative officers, in Habeas Corpus proceedings, when it is alleged and shown that they have abused the power and discretion conferred upon them, or that they *rested their conclusions on a manifestly erroneous construction or misconception of the law applicable to the facts disclosed by the record.*

The ruling of the Board of Special Inquiry and of the respondent Collector of Customs, that an industrial partner in a Philippine mercantile copartnership, who gives his services to the business as salesman or manager, is not a merchant as that term is used in the Immigration Act, was based upon such a manifestly erroneous construction and misconception of the Act of Congress and the laws of the Philippine Islands touching commercial partnerships, that the Courts of the Philippine

Islands and this Honorable Court may and should review and reverse, in Habeas Corpus proceedings, the order of the respondent detaining, and directing the deportation of your petitioners.

WHEREFORE, your petitioners respectfully pray for a writ of certiorari, addressed to the Supreme Court of the Philippine Islands, directing that Court to certify to this Court the record in the case pending therein entitled "Dharandas Tulsidas, Naraindas Lekhraj and Allumal Hakumal Sukhrani, petitioners and appellees, versus The Insular Collector of Customs, respondent and appellant," No. 16139, in order that the same may be reviewed and determined by this Court as provided by law, and that the judgment of the Supreme Court of the Philippine Islands in said case may be reversed by this Honorable Court.

ADAM C. CARSON,
Attorney for the Petitioners.

State of New York,
County of New York, } ss.:
City of New York,

Adam C. Carson, being duly sworn, says that he is one of the attorneys and counsel for the petitioners herein; that he prepared and has read the foregoing petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

ADAM C. CARSON.

Subscribed and sworn to before
me this day of May, 1921.

E. M. GUCKES,
Notary.

MEMORANDUM IN SUPPORT OF THE PETITION FOR THE WRIT OF CERTIORARI.

Preliminary Observations, and Summary Review of the Record.

The name of the writer of this memorandum appears in the record as one of the members of the Supreme Court of the Philippine Islands, present at the date of the promulgation of its decision in this case (Record, page 22. The references in the petition are to the paging of the original certified copy of the record. Those in this memorandum to the paging in the printed copy of the record filed herewith). But his signature was not attached to the decision, and an examination of the records of that Court will further disclose that, at that time, he had submitted his resignation from the Court and was on the eve of his departure for the United States; and that a minute order was duly entered by the Court a few days later, setting forth the fact that he took no part in the discusssion and disposition of this, as well as a number of other cases, submitted on the briefs, without oral argument, which were pending final judgment when he left the Islands.

It is admitted at the outset that the evidence of record as to the status of the petitioner Tulsidas falls far short of being as satisfactory and convincing as that submitted by his co-petitioners, Lekhraj and Sukhrani; and, except in so far as specific reference is made to his case, what is said in this memorandum is submitted with special reference to the evidence submitted by Lekhraj and Sukhrani.

The material facts upon which the prayer for

the writ rests, as disclosed by the record, may be restated and summarized briefly as follows:

The Bengal Bazaar is a large silk store in Manila, owned and conducted for many years past by natives of British India, with an invested capital of more than one hundred thousand pesos. Upon the death of the former proprietors, their heirs, most, if not all of whom reside in India, reorganized the business, and on the 19th day of September, 1919, entered into articles of partnership with seven of their fellow-countrymen, under the terms of which these seven became industrial partners, and undertook for a specified share in the profits, to carry on the business. The industrial partners invested no money in the business; and the heirs, the capitalist partners, reserved to themselves the direction, control and management of the partnership, but with an express provision in the articles for the appointment of "such manager or managers from the industrial partners as they may deem necessary or proper for the management of the store above mentioned."

Three of the industrial partners were appointed managers of the store in Manila, two of whom are the petitioners Lekhraj and Sukhrani.

(NOTE.—In the original petition, hastily prepared because of scant time for filing, after receipt of the record forwarded from Manila, it is said that these petitioners are sub-managers. But a re-examination of the record discloses that, as first stated, they were managers, and not merely sub-managers of the store in Manila.)

The petitioner Tulsidas is mentioned in the articles of partnership, but he was not given any part in the supervision or management of the busi-

ness, other than that to which he is entitled by law by virtue of his interest therein as an industrial partner.

Lekhraj is entitled to receive 15%, Sukhrani 10% and Tulsidas 5% of the profits of the business. None of them receives any salary; and under the express provisions of the articles they are required to bear their share of the losses of the business in their accountings with the firm and with each other, in proportion to the share of the profits to which they are respectively entitled; all of them, nevertheless, being jointly and severally liable to third parties for the debts and obligations of the firm. Compania Maritima vs. Munoz, 9 Phil. Rep., 326.

Both Lekhraj and Sukhrani were old employees in the store in Manila, Lekhraj having served there, as a salesman, for about nineteen years and Sukhrani for more than three years. At the date of the reorganization of the business, Sukhrani had been away from Manila for about sixteen months on vacation at his home in India; and Lekhraj at that time had been away from Manila at his home in India for about three years. Tulsidas, who was only nineteen years old, had never been in Manila.

The articles of partnership were executed in Hong Kong, and soon thereafter, on September 26, 1919, Lekhraj, Sukhrani and Tulsidas arrived in Manila Bay, where they were detained by the Immigration Officers and brought before a special examining board.

The Immigration Officers being of opinion that "Industrial partners are not merchants within the meaning of the Immigration Law," refused them

landing in the Philippines, and entered orders for their deportation.

In *habeas corpus* proceedings, in the Court of First Instance of Manila, these orders were set aside; but the judgment of the Court of First Instance was reversed on an appeal to the Supreme Court of the Philippine Islands, wherein a decision was filed on the 9th of September, 1920, directing the entry of final judgment sustaining the deportation orders:—not on the grounds assigned by the Immigration Officers, but because of the failure of the petitioners to present "section six" certificates, and for the additional reason that they had failed to submit proof that prior to their arrival in Manila they had been merchants in the country from which they came.

The petition for a writ of certiorari is herewith submitted in order to secure a review of the judgment of the Supreme Court of the Philippine Islands entered in pursuance of this decision on October 30, 1920.

It is confidently submitted, on behalf of Lekhraj and Sukhrani, that the evidence of record affirmatively discloses that they are "merchants" as that term is used in the Immigration Laws of the United States.

Indeed, we go farther, and confidently submit that the evidence as to their status, at the time of their arrival in the port of Manila, brings them squarely within the four corners of the rigid and severely restricted definition of that term which has been adopted by the Immigration Officers of the United States, with the approval of the Secretary of Labor, in the enforcement of the so-called latitudinal and longitudinal exclusion clause of

section 3 of the Immigration Act, and is as follows:

> "A merchant is a person engaged, in good faith, in buying and selling merchandise, at a fixed place of business, which is conducted in his name and under his supervision, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant."

There are substantial grounds for a contention that this definition (which is a slightly modified form of the statutory definition of the word *merchant* as found in the Chinese Immigration Laws, incorporating therewith a requirement that the merchant's fixed place of business must be conducted "under his supervision." Sec. 2 of the Act of Congress of May, 1892, as amended November 3, 1893) is too narrow and restricted, in that it appears to exclude many members of the merchant class whose admission to the territory of the United States was contemplated by the Congress when it laid down the exceptions to the general exclusion provisions of Section 3 of the Immigration Act. We do not deem it necessary, however, to challenge the substantial accuracy of the definition in submitting this petition on behalf of Lekhraj and Sukhrani, because, as we contend, the facts as to their status as disclosed by the record bring them squarely within its terms:—it being understood, however, in accord with the well settled doctrine of the courts in the construction

and application of the word merchant as found in the Immigration Laws of the United States, that the requirement as to the conduct of his business by the merchant "in his name and under his supervision," contemplates and includes the case of a partner in a mercantile co-partnership, who, as such partner, or by express agreement with, or by specific designation of his associates, is charged with and participates in the supervison and management of the business of the partnership; and whose name is expressly mentioned in the articles of partnership as one of the partners doing business under the firm name. Tom Hong vs. U. S., 190 U. S., 517; Lee Ken vs. U. S., 62 Fed. Rep., 914; Wong Ah Gah vs. U. S., 94 Fed. Rep., 831; Wong Fong vs. U. S., 77 Fed. Rep., 168.

In these days of modern business and great combinations of capital and material resources, we do not believe that it will be seriously contended that, in excepting merchants from the exclusion provisions of the Immigration Act, the Congress intended to admit only those petty tradesmen who individually and personally own, control and supervise a particular business; and to exclude the managing partners and directors of great mercantile enterprises, which, because of their magnitude or for some other sufficient reason, are jointly owned, controlled and supervised by two or more associates in business operating under one form or other of partnership agreement.

The evidence in support of the facts relied upon by Lekhraj and Sukhrani as proof of their status as merchants, at the time of their arrival in Manila, is clear and convincing.

Had any doubt arisen as to the truth and accuracy of their uncontroverted statements as to their former residence in Manila, and their employment as salesmen in the silk-store in Manila to which they were returning as industrial partners, such doubts could readily have been resolved by calling for additional evidence, easily obtainable in the locality in which the proceedings were had. But no question appears to have been raised by the immigration officers at the time when they entered the deportation orders, or in the course of the *habeas corpus* proceedings in the insular courts, as to the facts relied upon by these petitioners; and these orders appear to have been based, not upon a ruling that the facts relied upon by the petitioners were not sufficiently established by the evidence, but upon the erroneous ruling that "industrial partners" in a mercantile co-partnership are not merchants within the meaning of that word in the Immigration Act (Record, page 14).

We concede that, as to the petitioner Tulsidas, there is substantial ground for a contention that notwithstanding the manifestly erroneous grounds upon which he has been denied landing in the Philippines, the writ should not issue because of the lack of sufficient affirmative evidence in the record in support of his claim that he is a merchant, and as such entitled to admission to American territory. If his own statements as to his employment as a salesman in India, for several years prior to his arrival in Manila, be accepted without reserve, it sufficiently appears, perhaps, that he is a member of the merchant class in the broad acceptation of that term. But, unlike his co-petitioners Lekhraj and Sukhrani, he does not

appear to have any direct participation in the management and supervision of the business in Manila in which he is an industrial partner; and, as a newcomer to the islands, something more than his own uncorroborated statements as to his status in the country from which he came might fairly and reasonably have been required of him.

It is not our contention that the mere fact that an immigrant's name appears in the articles of partnership of a mercantile co-partnership is affirmative proof that he is a merchant; but, rather, that it is competent evidence, tending to establish his status as a merchant, which may properly be taken into consideration together with the other evidence in the record, in the determination of a question as to his true status.

Nature and object of these proceedings.

This is a test case.

The issuance of the writ, followed by a review by this Honorable Court of the record made up in the courts of the Philippine Islands, on the merits, is not sought merely in the hope that this Court may find, in the record of this particular case, facts sufficient to warrant the admission of some or all of the petitioners to residence in the Islands.

Affirmative remedial action by this Court is invoked to correct errors in the construction and application of the immigration laws of the United States by the Supreme Court of the Philippine Islands, which, if permitted by this Court to pass unnoticed and uncorrected, will result, not merely in the deportation of the petitioners, but also in the exclusion of all members of the ex-

cepted classes seeking admission to the Islands from continental Asia, other than Chinese persons seeking admission to the Islands under the Chinese Immigration Laws; and this, whether they be newcomers, or persons now living and lawfully engaged in business in the Islands who may hereafter leave the Islands temporarily, on business, or for pleasure, or for the restoration of their health by a visit to their native land.

The intervention of this Honorable Court is further and especially invoked to secure the correction of erroneous rulings by the Philippine Immigration Officers which deny the status of merchants under the Immigration Laws of the United States to the local managing-partners and managing-agents of Philippine branches of British-Indian and other continental Asiatic mercantile houses in the Philippines, of which the capital is furnished by non-resident British-Indians and other continental Asiatics, in all cases wherein it appears that such local managing-partner or managing-agent is a continental Asiatic who has not furnished a part of the capital invested in the business.

The rulings of the Insular Supreme Court.

The Supreme Court of the Philippine Islands, the court of last resort in that jurisdiction, based its judgment sustaining the deportation orders against the petitioners, on two grounds (Record, page 22).

I. The principal ground is set forth in the Court's ruling that "the sole evidence permissible" in support of the petitioners' claim that they are merchants is the presentation of a "Section-six

Certificate," and that no such certificate having been presented, "The Board of Special Inquiry was, therefore, justified in disregarding all other proof relating to their occupation as merchants" and "was not only authorized but obligated, under the law, to refuse the appellees admission into the Philippine Islands" (Record, pages 23-24).

But not only does the law excluding continental Asiatics, other than Chinese, from American territory, contain no *requirement* for the presentation by immigrants of the excepted classes, of "Section-six Certificates" such as are prescribed under the Chinese immigration laws; but no law or regulation with the force of law *authorizes* the issuance of such certificates to immigrants applying for admission to the Philippines from continental Asia, other than Chinese persons; and the record discloses that the production of such certificates was not even called for by the Philippine immigration officers who examined the petitioners and ordered their deportation.

The so-called "Section-six Certificates" were devised and authorized as a part of the machinery which was deemed necessary in the administration of the Chinese Immigration Laws and Treaties: and no continental Asiatic—other than a Chinese person—seeking admission to the Philippine Islands as a member of one of the excepted classes, can lawfully procure the issuance of such a certificate, or secure for himself the rights and benefits to which a Chinese person is entitled, under the Chinese Immigration Laws and Treaties, by virtue of the possession of such a certificate. Section 6, Act of May 6, 1882, as amended and

added to by Act of July 5, 1884 (22 Stat. L., 58, 23 Stat. L., 115).

So long, then, as this decision of the Court of last resort in the Philippines stands unreversed in the Philippine Reports, so long must the express provisions of the Act of Congress excepting the members of certain classes of continental Asiatics, other than Chinese persons, from its general exclusion provisions, remain a dead letter in that jurisdiction; and British-Indians and citizens and subjects of friendly nations on the continent of Asia, other than Chinese persons, will be denied the rights and privileges which the Congress, in express terms, has conferred upon them.

Subject only to the control of this Honorable Court the immigration officers and the inferior courts of the Philippine Islands are bound by the decisions and rulings of the Supreme Court of the Islands; and the record discloses that that court declined to modify or amend its rulings on a motion for a rehearing, specifically inviting its attention to the impracticability of the procurement of "Section-six Certificates" by continental Asiatics other than persons of Chinese descent (Record, pages 25-26).

II. As an additional ground for its judgment sustaining the order deporting the petitioners, the Insular Supreme Court ruled, in effect, that continental Asiatics, seeking admission to the Philippine Islands as merchants, must submit proof that they were merchants, in the country of their origin, prior to their arrival in the Islands; and that proof lished mercantile business in the Islands in which

that they are merchants at the time of their arrival, and that they are seeking admission to the Islands for the purpose of engaging in an estab they have an interest, is not sufficient to entitle them to admission as members of one of the excepted classes (Record, page 24).

But all that is required by the statute is proof that the applicant is a merchant at the time when he seeks admission to American territory; and if that fact can be, and is, established, without production of proof of prior status in the country of which the applicant is a native, there is nothing in the statute which requires the submission of proof of such prior status.

Doubtless cases may and will arise wherein the courts and the immigration officers would be justified in declining to accept, as satisfactory or convincing, evidence of an immigrant's status as a merchant at the time of his arrival in American territory, which fails to establish the fact that he was a merchant in his own country prior to his arrival. But there is no authority in the Act of Congress for the requirement of the production of evidence as to status prior to arrival, under an arbitrary rule, which would preclude the courts or the immigration officers from the examination or consideration of other evidence submitted by the applicant, in cases wherein it would be manifestly unreasonable and impracticable to apply the rule, such as, for example, the case of a former resident domiciled in American territory, returning to his domicile after a temporary absence.

The application of an arbitrary rule of this kind would deny admission to the Islands to a British-

Indian merchant doing business in the city of Manila, returning from a business trip to India; to an adult son of such a merchant returning to the Islands to take over his father's business after completing his mercantile education in Hong Kong or Calcutta; and to many others whose admission to the Islands as members of the merchant class was clearly contemplated by the law-maker.

Subdivision 3 of Rule 8 of the Immigration Rules promulgated by the Commissioner of Immigration of the United States with the approval of the Secretary of Labor requires "natives of the geographically defined territory who claim exemption on the ground that they are of a status or occupation mentioned in the exceptions to the geographical excluding clause to support such claim by evidence procured in the place of their domicile showing what their status or occupation has been during at least the two preceding years;" and that the authenticity of this evidence "shall be attested by the consular officer of the United States located nearest such place of domicile." Immigration Laws and Rules of May 1, 1917, Fifth Edition, December 1920, published by the U. S. Department of Labor.

It is quite clear, however, that these rules could not have been intended to apply to natives of continental Asia returning to American territory after an absence therefrom of less than two years; and it appears from the record that Sukhrani, one of the petitioners in the instant case, was returning to Manila after an absence from the Islands of only about sixteen months (Record, page 13).

It is to be observed furthermore that these rules are not in force in the Philippine Islands, wherein

the Act of Congress is enforced, not by the "Bureau of Immigration and the Immigration Service" of the United States, but by the "officers of the general Government thereof" (Section 1, Act of Feb. 5, 1917); that no such rule has been promulgated by the "officers of the general government" of the Philippines; that the immigration officers at Manila did not base their deportation order against the petitioners on their failure to comply with any such rule; and that in the absence of a rule of this kind duly adopted and promulgated, neither the courts nor the immigration officers of the Philippine Islands are authorized under the law to demand a particular form of evidence in support of an immigrant's claim of exemption, as a member of one of the excepted classes, provided he submits satisfactory and convincing proof, in some other form, of his status or occupation at the time of his arrival in the Islands.

The record discloses that one of the petitioners, Lekhraj, was returning to the Philippine Islands, where he had formerly resided for about nineteen years, after an absence of about three years; that another of the petitioners, Sukhrani, was returning to the Islands, where he had formerly resided for more than three years, after an absence of about sixteen months; that Sukhrani had gone to his home in India on vacation and for his health; that both of these petitioners had been formerly engaged in mercantile pursuits, as salesmen, in the very silk-shop or bazaar in Manila to which they were returning as industrial partners, after the death of the former proprietors, under Articles of partnership with their heirs, "the genuineness of which is not questioned:" and that these two to-

gether with another industrial partner, were to act as managers of the store in which they had an interest as industrial partners (Record, pages 10-12).

It is urged on behalf of these petitioners, that the omission from the record of evidence as to their status as merchants in the country of their origin, did not furnish sufficient ground for the total disregard by the Supreme Court of the Philippine Islands, under an arbitrary rule, of the unchallenged evidence clearly establishing their status as merchants at the time when they returned to the Islands, and applied for admission as members of one of the classes excepted from the general provisions of the exclusion laws of the United States.

The Rulings by the Immigration Officials.

The Immigration Officers based their orders for the deportation of the petitioners on grounds wholly different from those upon which these orders were sustained by the Insular Supreme Court.

Their rulings, and the report of the proceedings had before the Examining Board, clearly disclose that these officers were of opinion that the evidence submitted by the petitioners, showing that they are industrial partners of a mercantile co-partnership, furnishes affirmative proof that the petitioners are not merchants as that term is used in the Act of Congress (Record, page 14).

These rulings were unqualifiedly reversed by the Court of First Instance of Manila, and the Insular Supreme Court did not challenge the correctness of the reasoning upon which the inferior court

rested its opinion in this regard, but reversed the judgment of that court and sustained the deportation orders on the grounds hereinbefore indicated (Record, pages 21, 23).

No doubt the immigration officers fell into error as a result of their misapprehension of the true meaning and connotations of the word *industrial* as it appears in the legal and technical term "industrial partner." They evidently conceived the idea that a partner described in the articles of partnership as an industrial partner, is not a general partner in the co-partnership with a separate individual interest in the business; but, rather, one who merely contracts to give his work or labor to the enterprise, and, as such, a *laborer* as that term is used in the Chinese immigrations laws, and therefore not entitled to admission to any territory of the United States as a member of one of the excepted classes.

But such loose reasoning rests on a manifest misconception of the Philippine statutes defining the technical and legal status of an industrial partner in a mercantile co-partnership, and of the American statute providing for the admission to American territory of continental Asiatics of the merchant class.

The Philippine Commercial Code recognizes and defines two classes of partners who may enter into a mercantile co-partnership:—*socios capitalistas* (capitalist partners) and *socios industriales* (industrial partners). The former are those who furnish the capital to the enterprise. The latter those who furnish no capital but lend their skill, their time, their experience and their services to the joint undertaking. Under the Code all are alike

partners, though their rights and obligations may and will vary within the limits prescribed by law, in accord with the terms of the articles of partnership. Code of Commerce, Philippine Islands, Book II, Title 1, Section Second.

There is nothing contained in this classification of the members of a co-partnership which sustains a ruling that an industrial partner in a commercial co-partnership is not a merchant as that term is used in the immigration laws of the United States. The mere fact that he furnishes no capital to the enterprise cannot have that effect, and the fact that he furnishes his services to the undertaking does not make him any the less a merchant as that term is used in the Act of Congress, if the services rendered are such as are ordinarily and usually performed by a member of the merchant class.

It is not contended that the mere fact that he is an industrial partner of a commercial enterprise constitutes in itself, proof that he is a merchant, as that term is used in the immigration laws of the United States. But where it appears, as it does in the instant case, that one is an industrial partner in a mercantile co-partnership, carrying on the business of a silk merchant, buying and selling silks, and that the services required of him as such industrial partner are those of manager and salesman, a ruling that such industrial partner is not a merchant, as that term is used in the immigration laws of the United States, because he is bound to work or labor for the partnership of which he is a member, is manifestly founded upon a misconception of the true meaning and intent of these laws.

The manager of a great department store in the

city of Chicago, or a salesman in a silk-store on the Escolta, in Manila, who forms a partnership with the widow and heirs of the deceased proprietor, is none the less a merchant, because he furnishes no capital to the undertaking, but, in lieu of capital, furnishes his services, and, by his unremitting work and labor, increases the value of the business four-fold.

The rights and obligations of industrial partners in a mercantile co-partnership were exhaustively considered and discussed by the Supreme Court of the Philippine Islands in the case of Compania Maritima vs. Munoz et al., 9 Phil. Rep., 326.

The following extract from the elaborate opinion in that case, prepared by Mr. Justice Willard, makes very clear the fallacy of the ruling of the immigration officers:

> "In limited partnerships the Code of Commerce recognizes a difference between general and special partners, but in a general partnership there is no such distinction—all the members are general partners. The fact that some may be industrial and some capitalist partners does not make the members of either of these classes alone such general partners. There is nothing in the Code which says that the industrial partners shall be the only general partners, nor is there anything which says that the capitalist partners shall be the only general partners."

"Article 127 of the Code of Commerce is as follows":

"All the members of the general co-partnership, be they or be they not managing partners

of the same, are liable personally and *in solidum* with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof."

"Do the words 'all the partners' found in this article include industrial partners? The same expression is found in other articles of the Code. In Article 129 it is said that if the management of the partnership has not been limited by special act to one of the partners, all shall have the right to participate in the management. Does this mean that the capitalist partners are the only ones who have that right, or does it include also industrial partners? Article 132 provides that when in the articles of partnership the management has been intrusted to a particular person, he cannot be deprived of such management, but that in certain cases the remaining partners may appoint a co-manager. Does the phrase 'remaining partners' include industrial partners, or is it limited to capitalist partners, and do industrial partners have no right to participate in the selection of the co-manager? Article 133 provides that all the partners shall have the right to examine the books of the partnership. Under this article are the capitalist partners the only ones who have such right? Article 135 provides that the partners cannot use the firm name in their private business. Does this limitation apply only to the capitalist partners or does it intend also to industrial partners? Article 222 provides that

a general partnership shall be dissolved by the death of one of the general partners unless it is otherwise provided in the articles. Would such a partnership continue if all the industrial partners should die? Article 229 provides that upon a dissolution of a geneal partnership it shall be liquidated by the former managers, but if all the partners do not agree to this, a general meeting shall be called, which shall determine to whom the settlement of the affairs shall be intrusted. Does the phrase 'all the partners' include industrial partners or are the capitalist partners the only ones who have a voice in the selection of a manager during the period of liquidation? Article 237 provides that the private property of the general partners shall not be taken in payment of the obligations of the partnership until its property has been exhausted. Does the phrase 'general partners' include industrial partners?'

"In all of these articles the industrial partners must be included. It cannot have been intended that, in such a partnership as the one in question, where there were two industrial partners and only one capitalist partner, the industrial partners should have no voice in the management of the business when the articles of partnership were silent on that subject; that when the manager appointed mismanages the business the industrial partner should have no right to appoint a co-manager; that they should have no right to examine the books; that they might use the firm name in their private business or that they should have no voice in the liquidation of the business after

dissolution. To give a person who contributed no more than say, five hundred pesos, these rights and to take them away from a person who contributes his services, worth, perhaps, infinitely more than five hundred pesos, would be to discriminate unfairly against industrial partners."

"If the phrase 'all the partners' as found in the articles other than Article 127 includes industrial partners then Article 127 must include them and they are liable by the terms thereof for the debts of the firm."

As to the petitioner Tulsidas:

We admitted at the outset that the evidence of record as to the status of the petitioner Tulsidas, falls far short of being as satisfactory and convincing as that submitted by Lekhraj and Sukhrani.

A newcomer to the Islands, his own uncorroborated statements as to his occupation in the country from which he came, which were not readily subject to verification or contradiction at the port of his arrival in American territory, lack much of what might fairly and reasonably have been required of him by the Philippine Immigration Officers, had any doubt or question arisen as to the truth and accuracy of his testimony.

Furthermore, the admitted fact that he has no right to participate in the management and supervision of the business in which he claims an interest as an industrial partner, other than the right of supervision secured to all industrial partners in commercial co-partnerships under the Commercial Code of the Philippines (supra, page),

substantially weakens his claim to the status of a merchant as that term is construed and applied by the Immigration Officers of the United States.

Nevertheless, accepting his testimony as the truth, it sufficiently and affirmatively appears, upon the whole record, that he is one of seven industrial partners, who, under articles of partnership the genuineness of which has not been drawn in question, have undertaken to carry on an established mercantile business in the Philippines for a share of the profits; that his duties as such industrial partner are those of a salesman; that for some years prior to his coming to the Islands he had been a salesman in India, and as such a member of the merchant class, lacking only an interest in the business to which he gave his services, to be entitled to recognition as a merchant under the Immigration Laws of the United States; that at the time of his arrival in the Islands he had acquired such an interest in an established business in Manila; that his name appears in the articles of partnership under which that business is conducted; and that although he does not participate in the management of the business, he is entitled to exercise a substantial degree of supervision over the conduct of its affairs under the provisions of the Commercial Code of the Philippines.

In his behalf, we submit that these facts sufficiently and affirmatively disclose that, at the time of his arrival in Manila, he was lawfully entitled to admission to the Philippine Islands, as a merchant, under the provisions of Section 3 of the Immigration Act.

Had the Immigration Officers challenged the truth and accuracy of the testimony upon which

the foregoing recitation of facts is based, this Court might well decline to issue the writ as prayed by this petitioner, despite the manifest error of the rulings upon which he was denied a landing on American territory. But it clearly appears that the Immigration Officers accepted the facts relied upon by the petitioner as true, and based their deportation order on an erroneous ruling that these facts negatived his claim to the status of a merchant under the Immigration Act.

It is respectfully submitted that despite the relative weakness of the evidence on behalf of Tulsidas, as compared with the evidence submitted on behalf of his co-petitioners Lekhraj and Sukhrani, it is sufficient under all the circumstances of this case, to maintain his prayer for a writ of certiorari, and, upon the merits, to maintain a reversal of the judgment entered in the Supreme Court of the Philippine Islands.

Respectfully submitted,

ADAM C. CARSON,
Attorney for the Petitioners.

HARTFORD BEAUMONT,
Manila, P. I.
W. DAVIS CONRAD,
New York City,
of Counsel.